

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANA L. FRANK,)	Civil Division
)	
Plaintiff,)	
)	
v.)	No. 1:22-cv-20
)	
EDWARD J. SMITH and)	
XPO LOGISTICS,)	
)	
Defendants.)	<u>JURY TRIAL DEMANDED</u>

NOTICE OF REMOVAL

Defendants, Edward J. Smith and XPO Logistics by and through their undersigned counsel, James M. Girman, Esquire, Julie A. Brennan, Esquire and the law firm of Pion, Nerone, Girman, Winslow & Smith P.C., hereby submit the following Notice of Removal pursuant to 28 U.S.C. §1441, et seq. and remove the above-captioned lawsuit from the Court of Common Pleas of Erie County, Pennsylvania, Docket No. 12760-21, to the United States District Court for the Western District of Pennsylvania, and in support thereof aver as follows:

1. Plaintiff initiated this lawsuit in the Court of Common Pleas of Erie County, Pennsylvania (Docket No. 12760-21), by the filing of a Complaint on December 23, 2021. Plaintiff subsequently filed an Amended Complaint on December 28, 2021. (Copies of the docket and all pleadings filed in the State Court action are attached hereto as Exhibit "A").
2. The Complaint names as Defendants Edward J. Smith and XPO Logistics and alleges that the Plaintiff incurred personal injuries in a January 18, 2020 motor vehicle accident that was caused by the negligence of Defendant Smith in the operation of his motor vehicle.
3. Plaintiff also alleges direct negligence claims against XPO Logistics as well as vicarious liability claims for the conduct of Defendant Smith.

4. Pursuant to Paragraph No. 1 of Plaintiff's Amended Complaint, Ana L. Frank is a resident of the State of Pennsylvania.

5. Pursuant to Paragraph No. 2 of Plaintiff's Amended Complaint, Defendant, Edward J. Smith is a resident of the State of New York.

6. Pursuant to paragraph 3 of the Amended Complaint XPO Logistics is a corporation organized under the laws of the state of Indiana with a principle place of business in the state of Indiana.

7. Accordingly, there is complete diversity of citizenship and the instant action therefore is between citizens of different states, thereby invoking the jurisdiction of this Court under 28 U.S.C. §1332(a)(1), so long as the amount in controversy requirement is met.

8. In the motor vehicle accident that is the subject of this lawsuit, Plaintiff alleges that she sustained bodily injuries and damages resulting in severe physical pain and suffering, discomfort, mental pain and suffering, mental anguish, anxiety, humiliation, an inability to pursue her usual activities and loss of enjoyment of life. Amended Complaint, ¶¶ 11,14.

9. Specifically, it is alleged that Plaintiff suffered the following injuries:

- a. Neck pain;
- b. Back pain;
- c. Migraine headaches;
- d. Vertigo;
- e. Tinnitus;
- f. Miscarriage of unborn child;
- g. Post-traumatic stress syndrome;
- h. Panic attacks;
- i. Anxiety; and
- j. Severe shock, strain or sprain of the nerves, muscles, tissues, ligaments and vessels of the musculoskeletal system.

Amended Complaint, ¶ 11.

10. The alleged nature of Plaintiff's injuries and claimed damages make it clear that she will seek an amount in excess of the jurisdictional requirement of \$75,000. See: Russo v. Wal-Mart Stores E., L.P., 3:17CV454, 2017 WL 1832341, *2-3. (M.D. Pa. May 8, 2017) (holding that allegations of significant injuries and damages in a complaint will trigger notice by the defendant that an amount in excess of the jurisdictional amount is at issue for purposes of the removal period); Sims v. PerkinElmer Instruments, LLC, CIV.A. 04CV3773, 2005 WL 746884, *2-3 (E.D. Pa. Mar. 31, 2005).

14. As such, upon information and belief, Defendants contend the amount in controversy requirements of 28 U.S.C. §1332(a) is satisfied, thereby vesting jurisdiction in this Court and rendering removal proper, pursuant to 28 U.S.C. §1446.

15. The above-entitled action, initiated in the Court of Common Pleas of Erie County, Pennsylvania, and arising from a motor vehicle accident that occurred in Erie County, Pennsylvania, is within the territorial jurisdiction of the United States District Court for the Western District of Pennsylvania, and the Erie division thereof. LCvR 3.

16. Pursuant to the provisions of 28 U.S.C. §1446 (b)(2)(A), all Defendants in this action are represented by undersigned counsel and herein join in the removal of this action.

17. Concurrent with the filing of this Notice of Removal, Defendants have filed a Notice of Filing of Notice of Removal with the Prothonotary of the Court of Common Pleas of Erie County, Pennsylvania advising that they have removed this action to the United States District Court for the Western District of Pennsylvania, Erie Division.

18. In filing this Notice of Removal, Defendants do not waive any affirmative defenses they may have or may hereinafter assert in this action.

WHEREFORE, Defendants pray that this Honorable Court remove the above-captioned case from the Court of Common Pleas of Erie County, Pennsylvania, to the United States District Court for the Western District of Pennsylvania.

JURY TRIAL DEMANDED.

Respectfully submitted,

PION, NERONE, GIRMAN, WINSLOW & SMITH, P.C.

BY: /s/ James M. Girman
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Pa. I.D. #58825
Julie A. Brennan, Esquire
Pa. I.D. #306987
Attorneys for Defendants,
Edward J. Smith and XPO Logistics.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal was filed with the Clerk via the CM/ECF Document Filing System and served upon counsel of record via the CM/ECM Notification email this 18th day of January, 2022 as follows:

Dara M. Bucholtz, Esquire
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PION, NERONE, GIRMAN, WINSLOW & SMITH, P.C.

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